IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.589 OF 1998

The Commissioner of Income-tax,
Bombay City - III, Bombay .. Applicant.
V/s.
Fertiplant Engg.Co.Pvt.Ltd. .. Respondent.

Mr.Ashok Kotangale for the applicant.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 11TH OCTOBER, 2005.

P.C. :

1. Heard the learned counsel for the applicant. The Tribunal has referred following questions for the opinion of this Court reading as under :-

> 1) Whether in the facts and in the circumstances of the case, the Tribunal was right in law in holding that there is no error in the assessment order passed by the Income-tax Officer and in consequently holding that exercise of revisional jurisdiction by the Commissioner of Income-tax was not proper ?
>
> 2) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of section 40(c) and not those of Section 40A(5) are applicable in the case of directors, who are also employees of the company ?

2. So far as question no.1 is concerned, the learned counsel for the revenue fairly states that the issue raised is already answered by the Apex

Court in the case of **Malabar Industrial Co. Ltd. V/s. CIT [(2000) 243 ITR 83 (SC)]** in favour of the assessee and against the revenue.

3. As regards question no.2 is concerned, the learned counsel for the revenue fairly states that the issue has already been answered by the Division Bench of this Court in the case of **CIT V/s. Hico Products P. Ltd. [(1993) 201 ITR 567 (Bom)]** in favour of the assessee and against the revenue.

4. In this view of the matter, both the questions stand answered in affirmative for the reasons stated in the cases cited supra.

5. Reference, accordingly, stands disposed of with no order as to costs.

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